139-608

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1441.

ANTHONY F. SEEBERGER, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

JOHN V. FARWELL, CHARLES B. FARWELL, JOHN V. FARWELL, JR., JOHN K. HARMON, AND JOHN T. CHUMASERO, COPARTNERS AS JOHN V. FARWELL & CO.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 17, 1890.

"peated and regular oscillations of the ends of the lever. "That it performs any torsional function is strenuously "disputed. The wire is very fine, AND AS ITS ENDS ARE "NOT FIRMLY FASTENED, but to some extent ARE PERMIT- "TED TO ROTATE IN THE HOLES OF THE BRACKETS, IT IS NOT "EASY TO SEE HOW IT CAN BE TWISTED TO EXERT ANY AP- "PRECIABLE FORCE."

6. THE EXHIBIT OLD STYLE WESTERN UNION KEY is simply a key, the lever of which is mounted in ordinary trunnions, and open to those objections to such pivotal connection which the present invention is designed to cure. It is not covered by any of the claims of the patent in controversy, and hence cannot be relied upon to anticipate them.

We submit, therefore, that in none of the exhibits is there shown or even suggested the improvement in controversy, and hence, in the language of Judge Coxe, "the "patentee has made an invention * * * entitling "him to a position FAR ABOVE the plane of the skilled "*mechanic*." There is no doubt of the utility of the invention; the infringement is clear.

The decree of the Circuit Court should therefore be affirmed.

Respectfully submitted by

ARTHUR V. BRIESEN,
Of Counsel for Appellee.

NEW YORK, February 19, 1891.

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1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court rooms in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, judge of the district court of the United States for the northern district of Illinois, on Thursday, the eighteenth day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the one hundred and fourteenth year.

WM. H. BRADLEY,
Clerk.

JOHN V. FARWELL, CHARLES B. FARWELL, John V. Farwell, jr., John K. Harmon, and John T. Chumasero, copartners as John V. Farwell & Co.,
vs.
ANTHONY F. SEEBERGER, COLLECTOR OF CUSTOMS for the port and district of Chicago. } Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the sixth day of August, 1888, came the plaintiffs, by their attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, their præcipe for a writ of summons, and
2 also, at the said time, filed their bond for costs in said entitled cause, which said præcipe and bond are in the words and figures following, to wit:

Præcipe.

UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

United States circuit court for the northern district of Illinois, October term, A. D. 1888.

JOHN V. FARWELL, CHARLES B. FARWELL, John V. Farwell, jr., John K. Harmon, and John T. Chumasero, copartners as John V. Farwell & Co.,
vs.
ANTHONY F. SEEBERGER, COLLECTOR OF CUSTOMS for the port and district of Chicago. } Assumpsit. Damages, $5,000.

The clerk of said court will issue a summons in the above-entitled cause to said defendant in a plea of trespass on the case on promises, to the damage of said plaintiffs in the sum of five thousand dollars, and direct the same to the marshal of said district to execute, and make it returnable to the October term of said court, A. D. 1888.

SHUMAN & DEFREES,
Plaintiffs' Attorneys.

To WM. H. BRADLEY, Esq., *Clerk*,
Chicago, Aug. 6th, 1888.

(Endorsed:) Filed Aug. 6, 1888. Wm. H. Bradley, clerk.

3 *Bond for costs.*

UNITED STATES of AMERICA,
Northern district of Illinois, ss:

Circuit court, October term, A. D. 1888.

JOHN V. FARWELL ET AL.
vs.
ANTHONY F. SEEBERGER, COLLECTOR, ETC. } In law.

We enter ourselves security for costs in this cause and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the plaintiffs of any costs ordered or adjudged to be paid by them we hereby agree and stipulate that execution may issue against our property for any costs taxed against plaintiffs. Dated this 6th day of August, A. D. 1888.

SHUMAN & DEFREES.

(Endorsed:) Filed Aug. 6, A. D. 1888. Wm. H. Bradley, clerk.

4 On the same day, to wit, on the sixth day of August, 1888, there issued out of said clerk's office a writ of summons in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon Anthony F. Seeberger, collector of customs for the port and district of Chicago, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of October next, to answer unto John V. Farwell, Charles B. Farwell, John V. Farwell, jr., John K. Harmon, and John T. Chumasero, copartners as John V. Farwell & Co., of a plea of trespass on the case upon promises to their damage, as is alleged, of five thousand dollars, and have you then and there this writ.

Witness the Hon. Samuel F. Miller, Acting Chief Justice of the Supreme Court of the United States of America, at Chicago, afore-
5 said, this sixth day of August, in the year of our Lord one thousand eight hundred and eighty-eight, and of our Independence the 113th year.

[SEAL.] WM. H. BRADLEY,
Clerk.

Marshal's return.

I have served the within writ by reading the same to and within the presence and hearing of Anthony F. Seeberger, collector of customs for the port and district of Chicago therein named on the 6th day of August, 1888.

F. H. MARSH,
U. S. Marshal.
By GEO. N. JONES,
Deputy.

(Endorsed:) Filed Aug. 6, A. D. 1888. Wm. H. Bradley, clerk.

Afterward to wit: On the ninth day of August, 1888, came the defendant, by his attorney, and filed in said clerk's office, his appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

Appearance.

United States circuit court, northern district of Illinois.

JNO. V. FARWELL ET AL.,
vs.
A. F. SEEBERGER, COLLECTOR, ETC. } No. 21031. Assumpsit.

6 The appearance of Anthony F. Seeberger, coll., defendant in this cause, is hereby entered by his attorney.

W. G. EWING,
United States Attorney.

(Endorsed:) Filed Aug. 9, 1888. Wm. H. Bradley, clerk.

Afterward to wit: On the twenty-first day of August, 1888, came the plaintiffs, by their attorneys, and filed in said clerk's office their declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

In the United States circuit court for the northern district of Illinois.

To the October term, 1888, John V. Farwell, Charles B. Farwell, John V. Farwell, jr., John K. Harmon, and John T. Chumasero, copartners, doing business under the firm name and style of John V. Farwell & Co., plaintiffs in this suit (which is a suit arising under the revenue laws of the United States, and is brought to recover duties claimed by the plaintiffs to have been illegally exacted of them and by them paid under pro-
7 test), by Shuman & Defrees, their attorneys, complain of Anthony F. Seeberger, collector of customs for the port and district of Chicago, defendant herein, who was summoned, etc., of a plea of trespass on the case on promises.

For that whereas, the said plaintiff heretofore to wit: On the first day of August, in the year of our Lord one thousand eight hundred and eighty-eight, at to wit, the northern district of Illinois, made payment to the said defendant collector, as aforesaid, of a certain large sum of money to wit, the sum of five thousand dollars and —— cents, lawful money of the United States, as duties under protest and in order to obtain possession of certain dress goods of cotton, &c., composed in part of wool, &c., T. I. 365, merchandise imported into the United States for them, the said plaintiffs, entered for consumption at the customhouse at the port of Chicago, in the district aforesaid, under the charge and control of the said defendant as such collector; and the said plaintiffs aver that said sum of money above specified, so paid to the said defendant, as aforesaid, as duties as aforesaid, was in excess of the amount of duties authorized by the laws of the United States to be levied, collected and paid upon the merchandise aforesaid, and was by the said defendant collector, illegally demanded and exacted of and from the said plaintiffs.

And the said plaintiffs aver that within ten days after the ascertainment and liquidation of the duties upon the merchandise aforesaid, by
8 the proper officers of the customs they, the said plaintiffs, being dissatisfied with the decision of the said collector, gave notice in writing to the said defendant, as collector, setting forth therein distinctly and specifically the ground of their, the said plaintiffs, objections thereto, and that within thirty days after the date of the said ascertainment and liquidation as aforesaid, the plaintiffs appealed to the Secretary of the Treasury of the United States.

And the said plaintiffs aver that the decision of the said Secretary of the Treasury has been had on said appeals and that this suit has been brought within ninety days after the decision of the said Secretary of the Treasury on such appeals.

By means whereof, and by force of the statute of the United States in such case made and provided, the said defendant became liable to pay to the said plaintiffs the sum of five thousand dollars and cents, lawful money as aforesaid, so illegally demanded of and under protest paid by the said plaintiffs as aforesaid, and being so liable the said defendant afterwards, to wit, on the day and year and at the district aforesaid, in consideration thereof undertook and then and there faithfully promised the said plaintiffs well and truly to pay to the said plaintiffs the said sum of money when he, the said defendant, should be thereunto afterwards requested.

9 And whereas also the said defendant afterwards, to wit, on the same day and year and at the place last aforesaid, became and was indebted to the said plaintiffs in the further sum of five thousand dollars, like lawful money, as aforesaid, for money by the said defendant before that time had and received to and for the use of the said plaintiffs; and being so indebted the said defendant afterwards, to wit, on the day and year and at the district last aforesaid, in consideration thereof, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned whenever the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant (although often requested, etc.) has not paid the said several sums of money above specified, or any or either of

them or any part thereof, to the said plaintiffs; but to pay the same or any part thereof, to the said plaintiffs the said defendant hath hitherto wholly neglected and refused, and still does so neglect and refuse, to the damage of the said plaintiffs in the sum of five thousand dollars, and therefore the said plaintiffs bring their suit, &c.

SHUMAN & DEFREES,
Plaintiffs' Attorneys.

(Endorsed:) Filed Aug. 21, 1888. Wm. H. Bradley, clerk.

10 Afterward, to wit, on the first day of June, 1889, came the defendant, by his attorney, and filed in said clerk's office his plea in said entitled cause, which said plea is in the words and figures following, to wit:

Plea.

In the circuit court of the United States of America for the northern district of Illinois, northern division, May term, 1889.

ANTHONY F. SEEBERGER, COLLECTOR, &C., *ats.* JOHN V. FARWELL ET AL. } No. 21031. Assumpsit.

And the said Anthony F. Seeberger, collector, &c., defendant, by William G. Ewing, United States attorney for this district, his attorney, comes and defends, etc., when, etc., and says that he did not undertake or promise in manner and form as the said plaintiffs have above thereof complained against him, and of this the said defendant puts himself upon the country, etc.

WILLIAM G. EWING,
U. S. Attorney, for Defendant.

(Endorsed:) Filed June 1, 1889. Wm. H. Bradley, clerk.

11 Afterward, to wit, on the twelfth day of June, 1889, there was filed in said clerk's office a stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

Stipulation.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States for the northern district of Illinois.

JOHN V. FARWELL ET AL. *vs.* ANTHONY F. SEEBERGER, COLLECTOR, &C., } Gen. No. 21031.

It is hereby stipulated that the above-entitled cause may be submitted to the court for trial without a jury, a jury being hereby expressly waived.

SHUMAN & DEFREES,
Attorneys for Plaintiffs.
W. G. EWING,
U. S. Attorney, for Defendant.

(Endorsed:) Filed this 12th day of June, A. D. 1889. Wm. H. Bradley, clerk.

12 Afterward, to wit: On the fifteenth day of June, in the adjourned May term of said court, 1889, in the records of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

JOHN V. FARWELL ET AL.
vs.
ANTHONY F. SEEBERGER, COLLECTOR, &C. } Assumpsit.

Now come the parties by their attorneys, and upon issue joined herein by agreement of the parties as per stipulation filed they waive the intervention of a jury and for trial put themselves upon the court, and after hearing the evidence and the arguments of the counsel, the court takes the same under advisement.

13 Afterward, to wit: On the 18th day of July, 1889, there was filed in the said clerk's office the opinion of Judge Blodgett in said entitled cause, which said opinion is in the words and figures following to wit:

Opinion.

In the circuit court of the United States for the northern district of Illinois.

JOHN V. FARWELL
vs.
ANTHONY F. SEEBERGER, COLLECTOR OF CUSTOMS. } July 18, 1889.

BLODGETT, J.:

Plaintiffs imported a quantity of women's and children's dress goods, composed mainly of wool and weighing less than four ounces to the square yard, upon which the collector imposed a duty of 9 cents per square yard and 40 per centum ad valorem, under paragraph e, of clause 365 of Heyl's arrangement of the act of March 3, 1883; the plaintiff insisting that said goods were composed in part of wool and part cotton, and dutiable under paragraph a and b of said clause 365 at 5 cts. per square yard and 35 per centum ad valorem, paid said duties under protest, appealed to the Secretary of the Treasury, by whom the action of the collector was affirmed and brought this suit in apt time to recover the excess of duties so paid.

14 The proof shows that the goods in question are women's and children's dress goods; that they are composed mainly of wool; that there is about 6 per cent. of cotton carded into the wool from which the warp of said goods is spun, and that there is no cotton in the filling of the goods. The proof also shows that this mixture of cotton in the warp of the goods was made purposely to secure the classification of the goods as composed in part only of wool. There is proof in the case also tending to show that the mixture of the cotton with the wool in the warp adds to the strength and firmness of the goods, and makes them less liable to shrink; but my conclusion is that one of the witnesses for the plaintiff honestly and frankly

stated the facts in the case when he said from the witness stand "that he understood the object of mixing the cotton with the wool was to secure a lower classification for the purpose of assessment for duties."

The goods contain no separate threads composed entirely of cotton or other material than wool, but all the cotton in the goods is carded into and made a part of the yarns composing the warp.

The collector in classifying the goods evidently assumed that the purpose of mixing the cotton with the wool was to secure a low classification, and assumed also that so small a quantity of cotton would not materially change the character of the goods as merchandise when offered for sale to consumers, and therefore looked upon the contention of the plaintiff for a lower classification as an attempt to defraud the revenue and accordingly imposed the higher duty under paragraph e of the same clause of the customs act.

Congress having made special provision for a lower rate of duty upon goods when composed in part of wool without naming how much of other material should enter into their composition in order to secure such lower rate of duty, I am of opinion that manufacturers and importers have the right to adjust themselves to this clause of the tariff and to manufacture these goods with only a small percentage of cotton for the purpose of bringing them specifically within paragraphs a and b of clause 365, and making them dutiable at the low rate contended for.

The policy which dictated the revision of the tariff laws by the act of March 3, 1883, was evidently to secure a reduction of duty upon many articles, and to that end this clause was adopted specifically, making low-priced goods, composed only in part of wool, dutiable at a lower rate.

The court has nothing to do with the policy of Congress further than to construe their acts as far as possible according to the intention of the legislators as it can be gathered from the law itself, and it seems very clear to me that the purpose in enacting this provision was to admit certain grades of woolen goods, with any mixture of material which should cheapen them, at a lower and reduced rate of duty.

The proof shows that the goods in question contain so small an amount of cotton that the ordinary dealer in them and the ordinary examiner would not detect the cotton without a close and careful examination; but I do not see that this changes the legal right of the plaintiff to bring his goods within the operation of the clause involved by the admixture of even a small percentage of cotton if he can do so, and I can not see why goods made of ninety-four per cent. in bulk of wool and six per cent. in bulk cotton do not fairly come within the description of goods composed in part of wool.

I therefore am of opinion that the collector should have classed these goods at the rate of duty contended for in the protest.

SHUMAN & DEFREES,
For Plaintiff.

W. G. EWING, &
U. S. Dist. Atty.

G. H. HARRIS,
Asst. U. S. Atty., for Defendant.

(Endorsed:) Filed July 18, 1889. Wm. H. Bradley, clerk.

17 On the same day, to wit, on the eighteenth day of July, in the July term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry:

Judgment.

JOHN V. FARWELL, CHARLES B. FARWELL, John V. Farwell, jr., John K. Harmon, and John T. Chumasero, *vs.* ANTHONY F. SEEBERGER, COLLECTOR, &c.	Assumpsit.

The court having considered, and being now fully advised upon the matters herein, finds the issues for the plaintiffs and assesses their damages at three thousand two hundred and sixty-five dollars and sixty-six cents, with interest thereon, from time of payment.

It is thereupon considered and adjudged by the court that said plaintiffs do have and recover of said defendant the said sum of three thousand two hundred and sixty-five dollars and sixty-six cents, their damages, with interest thereon from time of payment, together with their costs in this behalf, amounting to twenty-three dollars and sixteen cents.

And the court finds that there was probable cause for the acts done herein by said defendant, and orders that execution do not issue herein.

18 On the hearing of said cause, the following exceptions were taken and were allowed by the court, and made of record, which said exceptions are in the words and figures following, to wit:

Defendant's bill of exceptions.

In the circuit court of the United States of America for the northern district of Illinois, northern division.

JOHN V. FARWELL ET AL. *vs.* ANTHONY F. SEEBERGER, COLLECTOR, &C.,	Assumpsit. Gen. No. 21031.

Be it remembered, that upon the trial of this cause the plaintiffs, to maintain the issue upon their side, introduced the following testimony:

The testimony of James S. Andrews, a witness called on behalf of the plaintiffs, tended to show that the goods in question in this suit were valued at less than twenty cents per square yard; that they weighed less than four ounces per square yard; that they were composed of cotton and wool; that they were commercially known as beiges; that they were classed and used as women's and children's dress goods; that they contained and were bought upon the representation that they did contain about five or six per centum of cotton; that there was a commercial reason for the in-

19 troduction of the cotton, the same being the fact that the goods would not shrink so much as they would if they had been all wool; that the cotton in the goods had been mixed with the wool, that is, the cotton and wool had been carded together; that the mixture of cotton and wool occurred only in the warp of the goods, and that the filling of the goods in question was all wool.

The testimony of E. F. Warnock, a witness called on behalf of the plaintiffs tended to show that the witness was an experienced salesman in the establishment of the plaintiffs; that he was familiar with the class of goods in question in this suit, and could tell what were the component materials of such goods; that he had bought the goods in question for the plaintiffs from samples; that the goods in question were composed of cotton and wool; that the cotton was carded in with the wool; that the goods contained from five to six per centum of cotton; that there were no threads of all cotton in the goods; that there was no cotton in the filling; that the cotton was found only in the warp; that the filling was composed of wool; that there were no threads in the goods not necessary to their proper structure, or to make them firm fabrics and merchantable goods; that the goods in question had no selvedged edges; that the cotton in the goods had the effect of strengthening the goods and making them wear better; that the cotton in the goods was not appreciable by ordinary tests; that witness would have to use acid to discover the presence of cotton, though some might detect it by the touch; that the goods passed as all wool goods; that it ordinarily costs more to manufacture the goods in question of part cotton than it would to make them entirely of wool; and that the reduction of duty on account of the goods being of part cotton, if they should be admitted at the lower rate, would more than compensate for the additional cost of manufacture.

20

The testimony of Henry L. Tollman, a witness on behalf of the plaintiffs, tended to show that witness was a microscopist expert; that witness had made microscopical and chemical examinations of the goods in question, and found the filling to be of wool, and the warp to be partly of cotton, the cotton being generally carded in with the wool, but in a few instances apparently felted on after spinning; that witness found no threads in the goods in question composed wholly of any other material than wool; that the percentage of cotton in the goods ranged from five to seven per centum; that there were no more threads in the warp of the goods than necessary to make a light, easily yielding fabric; and that the introduction of the cotton in the warp or threads running lengthwise had the effect of preventing the goods from stretching, as cotton stretches less than wool.

21

The testimony of Sidney W. Rice, a witness called on behalf of the plaintiffs, tended to show that the witness was an experienced buyer and seller of dress goods, employed in the dress goods department of the plaintiffs, and that he was familiar with the class of goods in question in this suit; that the goods in question had been bought from the manufacturers by samples, and had not been manufactured specially for the plaintiffs upon their order; that at the time they were purchased they were staple goods in the market and were sold all over America; that the goods had been invoiced to the plaintiffs as mixed goods composed of cotton and wool; and that the goods had been purchased as mixed goods because the introduction of the cotton would change the classification of the goods to the advantage of the purchaser, though, as witness believed, such introduction of cotton would not be of any material advantage to the goods as to their merchantability; and further that the goods had been represented to contain about ten per centum of cotton in warp, making about five per centum to the square yard.

And that thereupon the court amongst other things made the following special finding of fact:

Special finding.

UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

In the circuit court of the United States for the northern district of Illinois.

JOHN V. FARWELL ET AL.
vs.
ANTHONY F. SEEBERGER, COLLECTOR of customs. } No. 21031—557 Assumpsit.

Come now the parties, and this suit having been submitted to the court for trial, without a jury, a jury having been expressly waived by stipulation in writing filed herein, and the court having heard the evidence and arguments of counsel, finds the facts specially as follows: That prior to the commencement of this suit, the plaintiffs imported and entered at the customhouse, in the port and district of Chicago, in the northern district of Illinois, certain women's and children's dress goods, composed of wool and cotton valued at less than twenty cents per square yard, and weighing less than 4 ounces to the square yard, upon which said merchandise the plaintiffs paid a duty of nine cents per square yard and forty per centum at valorem, assessed by the defendant, collector of customs, under Schedule K, section 2502, act of March 3, 1883, as women's and children's dress goods, composed in part of wool * * * with threads of other materials introduced for the purpose of changing the classification * * * (365 T. P., new). That for the purpose of obtaining possession of said merchandise, the plaintiffs under protest paid to the defendant, as such collector, the duties demanded of them.

23 That within ten days after the ascertainment and liquidation of the duties upon the merchandise in question, by the proper officers of the customs, the plaintiffs gave notice in writing to the collector, defendant, setting forth therein distinctly and specifically the grounds of their objection to the payment of the duties assessed upon said merchandise, and within thirty days after such ascertainment and liquidation of the duties, as aforesaid, the plaintiffs duly appealed therefrom to the Secretary of the Treasury.

That in such protests and appeals the plaintiffs claimed said merchandise should be assessed a duty of five cents per square yard and thirty-five per centum ad valorem, under Schedule K, section 2502, act of March 3, 1883, as women's and children's dress goods * * * composed in part of wool * * * valued at not exceeding twenty cents per square yard, and weighing less than four ounces to the square yard, (365 T. P., new).

That the decision of the Secretary of the Treasury was had on said appeals adversely to the claim of the plaintiffs, and this suit was brought within ninety days after such decision of the Secretary of the Treasury on such appeals to recover the alleged excess of duties, amounting to $\$3{,}265\frac{66}{100}$.

And the court further finds from the proof—

1. That the goods in question are composed of wool and cotton, the cotton being carded in with the wool, from which the yarn composing the warp of said goods is spun, there being about 6 per cent. of cotton mixed with the wool, as aforesaid, so that the goods are composed of about 94 per cent. in quantity of wool, and 6 per cent. in quantity of cotton.

24

2. And the court further finds from the proof that said cotton is mixed with the wool from which the yarn composing the warp of said goods is spun, for the purpose of securing the classification of said goods under clause a and b, in paragraph 365, of Heyl's arrangement of said act of March 3, 1883, and that the ordinary examiner of said goods would not detect the cotton without careful examination.

3. That said goods have no selvedges of different material from the body thereof, and there are no threads or yarns of said goods made wholly of cotton, or other material than wool.

4. That it costs slightly more to manufacture said goods with the said mixture than it would to make them all of wool.

I therefore find that the goods in question are composed in part of wool and part of cotton, weighing less than 4 ounces to the square yard, and valued at not exceeding 20 cents per square yard, and find the issues for the plaintiffs and assess their damages at $\$3{,}265\frac{66}{100}$, with interest from the dates of the various payments.

(Endorsed:) Filed July 18, 1889. Wm. H. Bradley, clerk.

25 To which said conclusions of law by the court, the defendant, by his counsel, then and there duly excepted and tendered this, his bill of exceptions, which he prays may be signed, sealed, and enrolled and made a part of the record, and the same is done accordingly.

[SEAL.] H. W. BLODGETT,
Judge.

(Endorsed:) Filed July 18, 1889. Wm. H. Bradley, Clerk.

26 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein John V. Farwell, Charles B. Farwell, John V. Farwell, jr., John K. Harmon, and John T. Chumasero, copartners as John V. Farwell & Co., are plaintiffs, and Anthony F. Seeberger, collector of customs for the port and district of Chicago, is defendant as the same appears from the records and files of said court now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, northern division, this twenty-eighth day of February, 1890.

[SEAL.] WM. H. BRADLEY,
Clerk.

27 UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

The United States of America, to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court between John V. Farwell, Charles B. Farwell, John V. Farwell, jr., John K. Harmon, and John T. Chumasero, copartners, as John V. Farwell & Co., and Anthony F. Seeberger, collector of customs for the port and district of Chicago, in an action of assumpsit a manifest error hath happened to the great damage of the said Anthony F. Seeberger, collector of customs for the port and district of Chicago, as by his complaint appears, and it being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1890, in the Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 3rd day of February, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the 114th year.

[SEAL.] WM. H. BRADLEY,
Clerk of the circuit court of the United States for the northern district of Illinois.

(Indorsed:) Supreme Court of the United States. Anthony F. Seeberger, collector of customs for the port and district of Chicago, plaintiff in error, vs. John V. Farwell, Charles B. Farwell, John V. Farwell, jr., John K. Harmon, and John T. Chumasero, copartners, etc., defendants in error. Writ of error. Copy deposited for the defendant in error in the clerk's office, U. S. northern district of Illinois.

28 UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

To John V. Farwell, Charles B. Farwell, John V. Farwell, junior, John K. Harmon, and John T. Chumasero, copartners, as John V. Farwell and company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, A. D. 1890, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the northern dis-

trict of Illinois, wherein John V. Farwell, Charles B. Farwell, John V. Farwell, junior, John K. Harmon, and John T. Chumasero are plaintiffs, and Anthony F. Seeberger, collector of customs for the port and district of Chicago is defendant, to show cause, if any there be, why the error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, judge, this twelfth day of February, in the year of our Lord one thousand eight hundred and ninety.

H. W. BLODGETT,
Judge.

Service accepted.

PERCY L. SHUMAN,
Att'y for Def'ts in Error.

2–12–'90.

(Indorsed :) 21031. Supreme Court of the United States. John V. Farwell et al., vs. Anthony F. Seeberger, coll'r. Citation to October term, A. D. 1890.

(Indorsed on cover :) N. Illinois, C. C. U. S. No. 1441. Anthony F. Seeberger, collector of customs for the port and district of Chicago, plaintiff in error, vs. John V. Farwell, Charles B. Farwell, John V. Farwell, jr., John K. Harmon, and John T. Chumasero, copartners, as John V. Farwell & Co. Filed October 17, 1890.

Office Supreme Court U. S.
FILED.
MAR 30 1891
JAMES H. MCKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1890.

ANTHONY F. SEEBERGER, COLLECTOR of customs for the district of Chicago, plaintiff in error,
vs.
JOHN B. FARWELL, CHARLES B. FARWELL, John B. Farwell, jr., John K. Harmon, and John F. Chumasero, copartners as John B. Farwell & Co.
No. 1441.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE PLAINTIFF IN ERROR.

Supreme Court of the United States.

OCTOBER TERM, 1890.

ANTHONY F. SEEBERGER, COLLECTOR of customs for the district of Chicago, plaintiff in error,
vs.
JOHN B. FARWELL, CHARLES B. FARWELL, John B. Farwell, jr., John K. Harmon, and John F. Chumasero, copartners as John B. Farwell & Co. } No. 1441.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE PLAINTIFF IN ERROR.

This case is, in almost every respect, like the case of *Magone* vs. *Luckemeyer*, No. 880, on the docket, and the two cases are by agreement of parties to be heard together. The only difference between the two cases is that this one was tried to the court, and the Luckemeyer case was tried to a jury. The cotton in the present case seems to have made up from 4 to 6 per cent. of the cloth, while in the Luckemeyer case it was only from 1½ to 3

per cent. In both cases, however, the ordinary dealer could not detect the presence of the cotton in the cloth, and a microscopic or chemical examination seems to have been necessary to make the fact known upon which these cases rest. The findings of Judge Blodgett are as follows:

> 1. That the goods in question are composed of wool and cotton, the cotton being carded in with the wool, from which the yarn composing the warp of said goods is spun, there being about 6 per cent. of cotton mixed with the wool, as aforesaid, so that the goods are composed of about 94 per cent. in quantity of wool, and 6 per cent. in quantity of cotton.
>
> 2. And the court further finds from the proof that said cotton is mixed with the wool from which the yarn composing the warp of said goods is spun, for the purpose of securing the classification of said goods under clause a and b, in paragraph 365, of Heyl's arrangement of said act of March 3, 1883, and that the ordinary examiner of said goods would not detect the cotton without careful examination.
>
> 3. That said goods have no selvedges of different material from the body thereof, and there are no threads or yarns of said goods made wholly of cotton, or other material than wool.
>
> 4. That it costs slightly more to manufacture said goods with the said mixture than it would to make them all of wool.
>
> I therefore find that the goods in question are composed in part of wool and part of cotton, weighing less than 4 ounces to the square yard, and valued at not exceeding 20 cents per square yard, and find the issues for the plaintiffs and assess their damages at $3,265.66, with interest from the dates of the various payments.

ASSIGNMENT OF ERROR.

The only assignment of error is that on the foregoing findings judgment should have been given for the defendant Collector Seeberger instead of for the plaintiffs Farwell.

The two propositions upon which the Government rests its contention that there should be a reversal in the Luckemeyer case, stated in the brief therein filed, have equal application to the present case; and it is not deemed necessary to do more than simply to refer to that brief.

WM. H. TAFT,
Solicitor-General.

Office Supreme Court U. S.
FILED.
MAR 30 1891
JAMES H. MCKENNEY

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 1441.

ANTHONY F. SEEBERGER, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

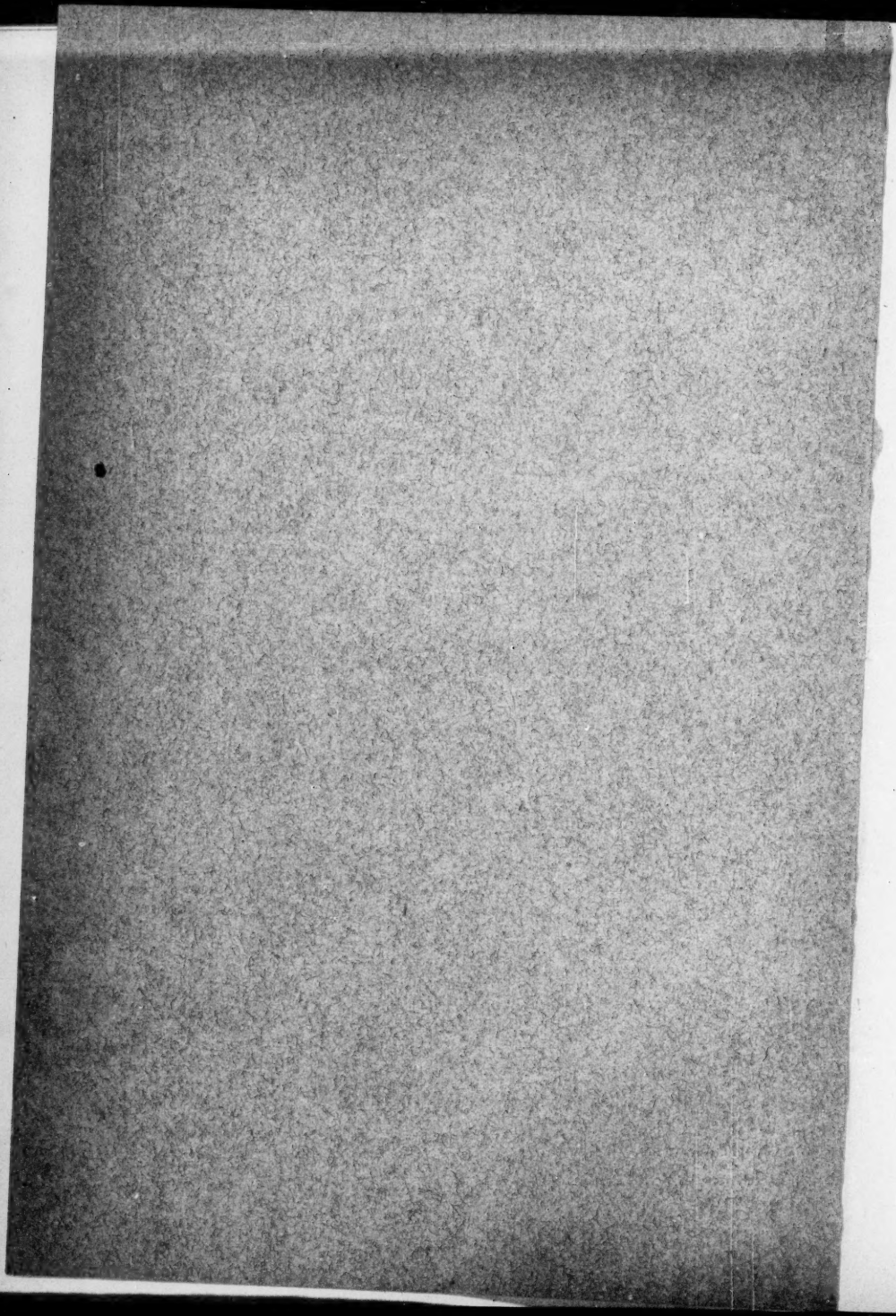
vs.

JOHN V. FARWELL, CHARLES B. FARWELL, JOHN V. FARWELL, JR., JOHN K. HARMON, AND JOHN T. CHUMASERO, COPARTNERS AS JOHN V. FARWELL & CO., DEFENDANTS IN ERROR.

BRIEF FOR DEFENDANTS IN ERROR.

PERCY L. SHUMAN,
For Defendants in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.



Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 1441.

ANTHONY F. SEEBERGER, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

JOHN V. FARWELL, CHARLES B. FARWELL, JOHN V. FARWELL, JR., JOHN K. HARMON, AND JOHN T. CHUMASERO, COPARTNERS AS JOHN V. FARWELL & CO., DEFENDANTS IN ERROR.

BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT OF CASE.

1. The defendants in error, being plaintiffs below, recovered a judgment (folio 17) for $3,265.66 upon the special finding of facts made by the judge (folios 22, 23, 24) that such amount had been illegally exacted from them by the collector of the port of Chicago, now the plaintiff in error.

2. The case arose upon an importation (folios 22, 23, 24) of certain women's and children's dress goods, valued at less than 20 cents per square yard and weighing less than 4 ounces per

square yard, composed of wool and cotton, the cotton being carded in with the wool from which the yarn composing the warp of said goods is spun, there being about 6 per cent. of cotton mixed with the wool, so that the goods are composed of about 94 per cent. in quantity of wool and 6 per cent. in quantity of cotton, dutiable under Schedule "K," paragraph 365, of the tariff act of March 3, 1883, section 2502. The plaintiffs claimed said goods should be assessed a duty of 5 cents per square yard and 35 % ad valorem, under Schedule "K," section 2502, act of March 3, 1883, as women's and children's dress goods * * * composed in part of wool, * * * valued at not exceeding 20 cents per square yard and weighing less than 4 ounces to the square yard (folio 23).

The collector of customs classified the goods as women's and children's dress goods composed in part of wool, * * * with threads of other materials introduced for the purpose of changing the classification * * * (paragraph 365*e*, Schedule "K"), and held that they were dutiable at the rate of 9 cents per square yard and 40 % ad valorem. The importers paid the duty assessed by the collector and filed a timely protest against the decision of the collector. They also filed timely appeals to the Secretary of the Treasury, who rendered his decisions adversely to the claim of the plaintiffs, and this suit was brought within apt time after such decision of the Secretary of the Treasury on such appeals to recover the alleged excess of duties illegally exacted.

3. The facts as to the character of the goods are contained in the special finding of Blodgett, J.:

(1.) That the goods in question are composed of wool and cotton, the cotton being carded in with the wool from which the yarn composing the warp of said goods is spun, there being about 6 per cent. of cotton mixed with the wool, as aforesaid, so that the goods are composed of about 94 per cent. in quantity of wool and 6 per cent. in quantity of cotton.

(2.) And the court further finds from the proof that said cotton is mixed with the wool from which the yarn composing the warp of said goods is spun for the purpose of securing the classification of said goods under clause *a* and *b* in paragraph 365 of Heyl's arrangement of said act of March 3, 1883, and that the ordinary examiner of said goods would not detect the cotton without careful examination.

(3.) THAT SAID GOODS HAVE NO SELVEDGES OF DIFFERENT MATERIAL FROM THE BODY THEREOF AND THERE ARE NO THREADS OR YARNS OF SAID GOODS MADE WHOLLY OF COTTON OR OTHER MATERIAL THAN WOOL.

(4.) That it costs slightly more to manufacture said goods with the said admixture than it would to make them with wool.

4. No exceptions were taken during the progress of the trial to the rulings of the court by either side.

5. The defendant below took exception (folio 25) to the conclusions of law by the court, and the record contains the bill of exceptions, consisting of a summary of the plaintiffs'

testimony in the case, the special finding of facts, and the conclusion of law excepted to by the defendant (folios 18–25).

6. The transcript of the record contains a copy of the opinion rendered by the judge and filed in the cause, which is somewhat more elaborate than the special finding of facts (folios 13–16).

7. The case was submitted to the court for trial without a jury, a jury being expressly waived by written stipulation filed (folio 11).

In his opinion (folio 15) the court says: "The collector, in "classifying the goods, evidently assumed that the purpose "of mixing the cotton with the wool was to secure a low "classification, and assumed also that so small a quantity "of cotton would not materially change the character of the "goods as merchandise when offered for same to consumers, "and therefore looked upon the contention of the plaintiff "for a lower classification as an attempt to defraud the reve- "nue, and accordingly imposed the higher duty under para- "graph *e* of the same clause of the customs act. Congress "having made special provisions for the lower rate of duty "upon goods when composed in part of wool, without nam- "ing how much of other material should enter into their "composition, in order to secure such lower rate of duty, I "am of opinion that manufacturers and importers have the "right to adjust themselves to this clause of the tariff and "to manufacture these goods with only a small percentage "of cotton for the purpose of bringing them specifically "within paragraphs *a* and *b* of clause 365 and making them "dutiable at the low rate contended for."

In a prior paragraph of the opinion the court had stated: "The goods contained no separate threads composed entirely "of cotton or other material than wool, but all the cotton "in the goods is carded into it and made a part of the yarns "composing the warp." The opinion continues: "The court "has nothing to do with the policy of Congress further than "to construe their acts as far as possible, according to the "intention of the legislators as it can be gathered from the "law itself, and it seems very clear to me that the purpose "in enacting this provision was to admit certain grades of "woolen goods with any mixture of material which should "cheapen them, at a lower and reduced rate of duty.

"The proof shows that the goods in question contained "so small an amount of cotton that the ordinary dealer in "them and the ordinary examiner would not detect the "cotton without a close and careful examination, but I do "not see that this changes the legal right of the plaintiff to "bring his goods within the operation of the clause involved "by the admixture of even a small percentage of cotton, if "he can do so, and I cannot see why goods made of 94 per "cent. in bulk of wool and 6 per cent. in bulk of cotton do "not fairly come within the description of goods composed "in part of wool."

8. While counsel for the defendants in error do not think that the practice adopted by the counsel for the Government in the court below, of preparing a bill of exceptions setting out the testimony taken at the trial in a case where the court makes a special finding of facts, and in which no exceptions were taken to the rulings of the court in the progress of the trial is correct, still, in view of the fact that this

record contains such a bill of exceptions, we submit that the testimony shown in the bill justifies the special findings of fact in every particular (folios 19–21). No exception could be taken to the conclusion of law.

Jennison *vs.* Leonard, 21 Wallace, 307.
Lathrop *vs.* Judson, 19 Howard, 66.
Norris *vs.* Jackson, 9 Wallace, 128.

ARGUMENT.

The paragraph of the law under which the goods in question are dutiable is as follows:

"Women's and children's dress goods, coat linings, Italian "cloths, and goods of like description, composed in part of "wool, worsted, the hair of the alpaca, goat, or other animals, "valued at not exceeding twenty cents per square yard, five "cents per square yard, and in addition thereto thirty-five "per centum ad valorem; valued at above twenty cents per "square yard, seven cents per square yard and forty per "centum ad valorem; if composed wholly of wool, worsted, "the hair of the alpaca, goat, or other animals, or of a mix-"ture of them, nine cents per square yard, and forty per "centum ad valorem; but all such goods with selvedges, "made wholly or in part of other materials, or with threads "of other materials introduced for the purpose of changing "the classification, shall be dutiable at nine cents per square "yard and forty per centum ad valorem: *Provided*, That all "such goods weighing over four ounces per square yard shall "pay a duty of thirty-five cents per pound and forty per "centum ad valorem." (Act March 3, 1883, sec. 2502, sched. "K.")

The clause of the above paragraph under which the collector classified the goods in question for duty is as follows: "BUT ALL SUCH GOODS WITH SELVEDGES, MADE WHOLLY OR "IN PART OF OTHER MATERIALS, OR WITH THREADS OF OTHER "MATERIALS INTRODUCED FOR THE PURPOSE OF CHANGING "THE CLASSIFICATION, SHALL BE DUTIABLE AT 9 CENTS PER "SQUARE YARD AND 40 PER CENTUM AD VALOREM."

The court finds, as a matter of fact on this point, as follows:

> "(3.) *That said goods have no selvedges of different material from the body thereof, and there are no* THREADS *or yarns of said goods* MADE WHOLLY OF COTTON OR OTHER MATERIAL THAN WOOL."

The sole question in this case seems to be whether the finding of fact that "there are no threads or yarns of said goods made wholly of cotton or other material than wool" is broad enough to take the goods out of the proviso in the statute for goods "with threads of other materials."

We think it must be conceded by importers that Congress intended to provide against the introduction of a few threads of cotton or other material than wool into woolen goods for the purpose of pretending to bring such goods within the class provided for in the first clause of this paragraph, and we must admit also that, while the number of threads of other materials which would be deemed sufficient to raise the presumption that they were introduced for the purpose of changing the classification is not specified, Congress intended by the language used to cover a case, wherein it would be manifest to the ordinary business man or customs

officer, that the few threads of cotton or other material introduced into the woolen goods were insufficient to warrant the claim that they were thereby commercially changed from "woolen goods," into what are properly known as "mixed goods."

It must be, we think, admitted as well on the part of the Government, that there was and is nothing in this case to indicate an intention on the part of these importers (the defendants in error) to evade the payment of the highest rate of duty upon the goods in question which a proper construction of this law would justify. There is nothing in the case tending to show what proportion of other material than wool (of cotton, for instance) may lawfully be introduced into dress goods composed in part of wool, in order that they may be properly classified as goods "composed in part of wool." It would seem that the finding of the court below must necessarily be followed by this Court, as the court below considered that point, and uses the following language in the opinion (folio 15) regarding the matter:

> "I am of opinion that manufacturers and importers have the right to adjust themselves to this clause of the tariff, and to manufacture these goods with only a small percentage of cotton for the purpose of bringing them specifically within paragraphs *a* and *b* of clause 365, making them dutiable at the low rate contended for."
>
> "* * * and it seems very clear to me that the purpose in enacting this provision was to admit certain grades of woolen goods with *any* mixture of material which should cheapen them at the lower and reduced rate of duty."

The exception of the law is not as to woolen goods with other materials, etc., but it specifically applies to woolen goods "with threads of other materials introduced," etc. Inasmuch as Judge Blodgett finds that the "cotton in these goods is carded in with the wool from which the yarn composing the warp of said goods is spun," it is apparent that he conceived the language of the act of Congress—"threads of other materials"—to mean threads composed wholly of other materials, and this seems to be the only reasonable construction of the language, when we consider what the effect would be upon the first clause of the paragraph, of holding that where goods contain threads partly of other materials, that fact should take them out of the description of "goods composed in part of wool, dutiable at five cents per square yard and thirty-five per centum ad valorem," and cast them in the classification which would make them dutiable at nine cents per square yard and forty per centum ad valorem. Such a construction would exclude all goods composed in part of wool and part of cotton from the benefits of the lower rate of duty provided in the first clause, and would operate so as to nullify that clause. This could not have been intended by Congress. The language, "threads of other materials," we submit, means threads composed wholly of other materials, and a sufficiently small number of such threads as to indicate an intention to evade the duty of nine cents per square yard and forty per centum ad valorem, while at the same time preserving all of the distinctive commercial features of all-wool goods.

In his finding the court says that "said cotton is mixed with the wool thread from which the yarn composing the

warp of said goods is spun, for the purpose of securing the classification of said goods under clause *a* and *b* of paragraph 365," and by the language of the opinion we are forced to the conclusion that the court did not deem such a purpose, so manifested, as being within the prohibition of the statute, but that the same was a legitimate exercise of business judgment on the part of the manufacturers of these goods, and conformable to the intention of Congress, that goods of mixed materials, in part of wool, valued at not exceeding twenty cents per square yard, should be dutiable at five cents per square yard and thirty-five per centum ad valorem.

Whether these goods contained a thread of material other than wool is probably a question of fact and not a mixed question of law and fact. It seems to have been so held by Lacombe, J., in the circuit court for the southern district of New York, as that court, in the case of Luckemeyer *et al. vs.* Magone, collector, submitted to a jury whether threads of other materials had been introduced into the goods in question in that case, in the following language (Magone *vs.* Luckemeyer, Oct. term, 1890, No. 880):

> "Has there been introduced into these goods
> "threads of material other than wool or worsted—
> "that is, threads, or threads of other material, not
> "composition or compound thread, composed of wool
> "and other materials, but the thread standing by it-
> "self of material other than wool."

That instruction carries with it the legal definition of the words of the law, "threads of other materials." The New York case was tried in March, 1889, and the Chicago case

was tried in July following. Judge Blodgett, therefore, followed with approval the construction of law adopted by Judge Lacombe, and having found that the goods did not contain "threads made wholly of cotton or other material than wool," his conclusion of law was a necessary sequence to the finding of fact in the case.

We therefore submit that the judgment below should be affirmed.

PERCY L. SHUMAN,.
For Defendants in Error.